

1 Appellant Walter H. Smith, President of Active Construction, Inc.,
2 appeared and represented himself. Respondent appeared through its
3 attorney, Keith D. McGoffin.

4 Witnesses were sworn and testified. Exhibits were examined. From
5 this the Pollution Control Hearings Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
9 a certified copy of its Regulation I and amendments thereto, of which
10 we take official notice. Section 9.15(c) of Regulation I makes it
11 unlawful for any person to cause or permit an untreated open area
12 within a private lot to be maintained without taking reasonable
13 precautions to prevent particulate matter from becoming airborne.
14 Particulate matter includes dust. Section 1.07 (cc).

15 II

16 On May 14, 1981, a sunny and windy day in Tacoma, appellant's
17 employees were excavating a construction site using customary
18 equipment, but without hoses or watering trucks, causing or permitting
19 an open area to be maintained without taking reasonable precautions to
20 prevent dust particulate matter from becoming airborne. Citizens
21 complained to respondent agency. After investigation and observation
22 of airborne dust by the inspector notice of violation issued, which was
23 followed by a \$250 civil penalty.

24 III

25 In the spring of 1981 appellant experienced problems maintaining
26 the subject construction site in conditions of very wet weather.

1 IV

2 Appellant has no previous record of violations or receipt of civil
3 penalties from respondent agency, having only had a few courtesy
4 conversations regarding construction site management for the
5 prevention of air pollution.

6 V

7 Any Finding of Fact which should be deemed a Conclusion of Law is
8 hereby adopted as such.

9 From these Findings the Board comes to these

10 CONCLUSIONS OF LAW

11 I

12 The Board has jurisdiction over these persons and these matters
13 under RCW 43.21B, and PSAPCA Regulation I, Article 3 and Article 8.

14 II

15 Appellant, Active Construction, Inc., through its employees, did
16 cause or permit an open area not to be maintained with reasonable
17 precaution, such as to prevent dust particulate matter from becoming
18 airborne on May 14, 1981.

19 III

20 A violation of PSAPCA Regulation I, Section 9.15 occurred and was
21 cited, following complaints and a site inspection by one of respondent
22 agency's inspectors, in accordance with Regulation I guidelines and
23 agency enforcement practices. A penalty of up to \$250 could be
24 assessed. Section 3.29. The violation was appellant's first,
25 however, and the penalty should be mitigated.

IV

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Conclusions the Board makes this

ORDER

The violation and \$250 civil penalty is affirmed, provided, however, that \$125 of the penalty is suspended on condition that appellant not violate respondent's regulations for a twelve-month period from the date of this Order.

DATED this 28th day of September, 1981.

POLLUTION CONTROL HEARINGS BOARD

Nat W. Washington
NAT W. WASHINGTON, Chairman

Gayle Bothrock
GAYLE BOTHROCK, Member

David Akana
DAVID AKANA, Member